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*Lisa A  
John*

*Service*



UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Fruit Salad, Inc.,

Respondent

) PACA Dkt. No. D-97-0027  
)  
)  
)  
) Decision Without Hearing  
) By Reason of Consent

This is a disciplinary proceeding brought under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §499a *et seq.*), hereinafter the PACA, which was instituted by the Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture on July 7, 1997, through the filing of a Complaint alleging that Respondent wilfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. §499b(4)) by failing to make full payment promptly of the agreed purchase prices, in the total amount of \$1,849,734.13, to forty (40) sellers for 278 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce between February 1995 and July 1996. The Complaint requests a finding that Respondent wilfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. §499b(4)) and an order that the facts and circumstances of Respondent's violations be published.

The parties have agreed to the issuance of this decision and order which resolves this matter without further procedure or hearing, pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.138), hereinafter the Rules of Practice. Complainant moved for the immediate entry of this Decision Without Hearing by Reason of Consent.

#### Findings of Fact

1. Fruit Salad, Inc., referred to herein as Respondent, is a corporation that was organized and existed under the laws of the State of Massachusetts, with a business mailing address P.O. Box 1527, Lawrence, Massachusetts 01842. Respondent is no longer conducting business.
2. PACA License number 670988 was issued to Respondent on November 25, 1966. Respondent's license was suspended on August 16, 1996, pursuant to Section 7(d) of the PACA (7 U.S.C. §499g(d)), for failure to pay a reparation award that had been entered against it, and was terminated on November 25, 1996, pursuant to Section 4(a) of the PACA (7 U.S.C. §499d(a)), for failure to pay the required annual renewal fee.
3. As set forth in section III of the Complaint, Respondent failed to make full payment promptly of the agreed purchase prices, in the total amount of \$1,849,734.13, to forty (40) sellers for 278 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce between February 1995 and July 1996.
4. Respondent's failures to make full payment promptly for its produce purchases constitute willful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. §499b(4)).

Conclusions

Respondent having admitted to all of the material allegations made in the Complaint and the parties having agreed to the entry of this decision, this decision and order will be entered.

Order

Respondent committed wilful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. §499b(4)).

The facts and circumstances of Respondent's violations shall be published.

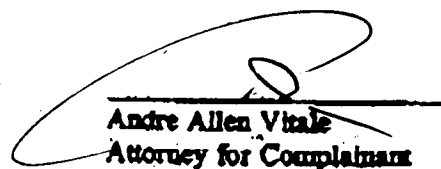
This Decision will become final and effective without further proceedings upon its issuance, pursuant to section 1.138 of the Rule of Practice (7 C.F.R. §1.138).

Copies hereof shall be served on the parties.

Fruit Salad, Inc.  
Respondent  
By:


Charles A. Torrese President  
Title:

  
Steven A. Raffin  
Attorney for Respondent

  
Andre Allen Vitale  
Attorney for Complainant

Done at Washington, D.C.

October 9, 1998

 Oct 9, 1998  
Edwin S. Bernstein  
Administrative Law Judge